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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-44454-2017
Reserved on: 06.08.2022
Pronounced on: 25.08.2022**

Nirmal Singh and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Anil Chaudhary, Advocate
for the petitioners.

Ms.Sakshi Bakshi, AAG, Punjab.

Mr.S.S.Rangi, Advocate
for respondent No.2.

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RAJESH BHARDWAJ, J.

Petitioners have approached this Court praying for quashing of FIR No.161, dated 22.12.2015, under Section 406 IPC, registered at Police Station Payal, District Khanna (Ludhiana), and consequential proceedings arising therefrom.

Adumbrated facts of the case are that the marriage in question took place on 26.12.2008 according to Sikh rites and rituals. Thereafter, the matrimonial discord took place between both the husband and the wife and on account of the same, the present FIR was lodged.

As per allegations in the FIR, the complainant-Kamaljit Kaur, daughter of Karam Singh, was married with petitioner No.2-Ranjeet Singh on 26.12.2008. The parents of the complainant had performed the marriage

with great pomp and show and gave sufficient dowry as per their capacity. The complainant is a permanent citizen of USA, however, her marriage took place in India with petitioner No.2. After the marriage, she lived in the matrimonial home. However, thereafter, she left the country and went back to USA. Before going to USA, she handed over all the dowry items, i.e. *istridhan* to her in-laws as depository. After going to USA, she filed a petition in April 2009 for calling her husband, i.e. petitioner No.2 to USA. She started sending money from USA to her in-laws. Petitioner No.2 also reached USA on 02.10.2011. Petitioner No.2-Ranjeet Singh passed his MBBS from Ukraine. As Ranjeet Singh was not doing any work hence all the expenses of his medical education was incurred by the complainant-wife. Thereafter, in the end of April 2014, husband of the complainant (petitioner No.2) came back to India and the complainant also came to India on 20.05.2014 at her matrimonial home in India. Complainant and petitioner No.2, after a stay of one month in India, went back to USA and thereafter, petitioner No.2 got a medical job in USA. Thereafter, he started, mentally and physically, harassing the complainant. Petitioner No.2 became the permanent citizen of USA on 24.02.2015. Thereafter, his behavior totally changed and the matrimonial life of both ran into rough weather. Petitioner No.2 left the company of the complainant on 06.08.2015 with a warning to the complainant to do whatever she feels right. The complainant came back to India on 21.10.2015. Negotiations were held with her in-laws, however, petitioner No.2 and his family members did not agree to the same and the complainant was warned for the divorce. Her *Istridhan* handed over to the in-laws as depository, was also refused to be returned. As a result, the present FIR was lodged by the complainant.

It is apposite to mention here that both the complainant and petitioner No.2 are permanent citizens of USA and are residing in USA only, as on date. The marriage between both of them was dissolved by way of a decree of divorce in USA itself on 25.09.2017. After registration of the above-mentioned FIR, the investigation commenced, however, petitioner No.2 neither joined investigation nor approached any Court of law for bail and thus, the challan was filed only against petitioner No.1. Now the present petition has been filed praying for quashing of the FIR.

Counsel for the petitioners has submitted that the petitioners have been falsely and frivolously implicated in this case. He has submitted that both, i.e. petitioner No.2 and respondent No.2 were married on 26.12.2008 and thereafter both shifted to USA and are permanent citizens of USA. He has submitted that the marriage was performed in a very simple manner without any dowry. He submits that in USA while living as a husband and wife, the couple had temperamental differences on account of demanding nature of the complainant and hence the husband, i.e. petitioner No.2, was shunted out from the home by the complainant-wife and as a result, petitioner No.2 had to leave the company of his wife and filed a divorce petition before the Superior Court of California, Country of FRESNO in USA. He submits that immediately thereafter, the complainant came to India and filed a false and frivolous FIR. The police did not investigate the case fairly and registered the FIR in a stereotyped manner. He submits that the divorce between petitioner No.2 and the complainant was granted on 25.09.2017 and the outstanding issues were amicably resolved at that time. A copy of the divorce petition, dated 25.09.2017, has

outstanding dispute between the husband and wife are already resolved, hence prosecution of the petitioners in the FIR is nothing but an abuse of the process of the law. He has submitted that the complainant and petitioner No.2, being permanent citizens of USA, have remained there and thus no cause of action did arise in India and hence, the Investigating Agency could not register the FIR as it lacks the territorial jurisdiction to investigate the same. He submits that FIR in question deserves to be quashed. He has relied upon Partap Singh and another vs State of Punjab and another 2010(14) RCR (Criminal) 465, Rajiv Mehta and another vs State of Punjab and others 2015(4) RCR (Criminal) 340, Bahadur Singh and others vs State of Punjab and another 2010(3) RCR (Criminal) 252, Harmanpreet Singh Ahluwalia and others vs State of Punjab and others 2009(2) RCR (Criminal) 956 and the judgment of this Court passed in CRM-M-53467-2019, decided on 08.11.2021 (Hardev Singh and others vs State of Punjab and another).

Counsel for respondent No.2 has vehemently opposed the submissions made by the counsel for the petitioners. He submits that the marriage between petitioner No.2 and the complainant took place in India and sufficient dowry was given in the marriage. He also submits that the complainant-wife had deposited her dowry items with her in-laws which are till date in their custody. He has submitted that petitioner No.2 and his family members hatched a conspiracy to marry petitioner No.2 with the complainant, who was already a permanent citizen of USA only to send petitioner No.2 to USA. The complainant incurred the complete expenses of his medical education. Resultantly, petitioner No.2 obtained his medical degree from Ukraine on the expenses borne by respondent No.2-

complainant. He submits that it was the complainant, who facilitated the complete journey of petitioner No.2 in settling him in USA by affording all the expenses. However, the moment petitioner No.2 became a permanent citizen of USA on 24.02.2015, he stabbed her in the back and started threatening the complainant for giving her divorce. The complainant tried her level best to save their matrimonial life, however, when the negotiations failed, she had to lodge the present FIR. He has submitted that her dowry articles are still in the custody of her in-laws and besides this, she had spent a huge amount on the medical education of petitioner No.2. In all these years, she has been sending money from USA to her in-laws for which there are transactions proof on record. He has submitted that petitioner No.2 has never joined investigation and hence, the challan is only presented against petitioner No.1. He submits that during pendency of the investigation, the FIR in question cannot be quashed. He submits that FIR itself is not an encyclopaedia and the allegations are substantiated only after conclusion of thorough investigation. He has relied upon **Rajesh Bajaj vs State NCT of Delhi**, 1999 AIR (SC) 1216, **M/s Neeharika Infrastructure Pvt.Ltd. Vs State of Maharashtra** 2021 AIR SC 1918, **Rafiq Ahmedibhai Paliwala vs State of Gujarat** 2019 AIR SC 1537, **Satvinder Kaur vs State (Govt. of NCT of Delhi)**, 1999 AIR SC 3596, **Mosiruddin Munshi vs Md.Siraj** 2014 AIR SC 3352, **Amit Ahuja vs Gian Parkash Bhambri**, 2010(3) RCR Criminal 586, **Sarabjit Singh vs State of Punjab** 2021 (4) RCR Criminal 187, **Pravin Niwritti Sawant vs Nisha Pravin Sawant** 2007(4) RCR (Criminal) 841 and **T.C.Mathai vs District and Sessions Judge, Thiruvananthapuram**, 1999 AIR SC 1385.

for the petitioners and submits that investigation qua petitioner No.2 is pending as he has not joined the investigation and hence, challan is presented only against petitioner No.1.

I have heard learned counsel for the parties and have perused the documents placed on the file.

Admittedly, petitioner No.2 and the complainant were married on 26.12.2008. Soon after the marriage, the complainant remained in India for a short period and thereafter being a permanent citizen of USA, she went back to USA. Thereafter, as per record of the case, it is apparent that she facilitated the settlement of petitioner No.2 in USA. It is apparent from the record that petitioner No.2 completed his medical education and he became a permanent citizen of USA after the marriage. Apparently, due to matrimonial discord, the FIR in question was lodged seven years after the marriage, i.e. on 22.12.2015. Thereafter, the marriage between petitioner No.2 and respondent No.2 was dissolved by way of a decree of divorce by the Court of competent jurisdiction, i.e. Superior Court of California, County of FRESNO, USA. Though the agreement was arrived at between the husband and the wife in the decree of divorce, however, there is nothing on record regarding any settlement pertaining to inter se litigation pending between both of them **in India**. After registration of the FIR, the challan apparently was filed qua petitioner No.1 only, however, petitioner No.2 never joined the investigation. There is nothing on the record to show that he has ever been granted any anticipatory bail. In the light of the arguments raised by the respective parties, it is apparent that though the marriage has been dissolved by a decree of divorce in USA, but the same was solemnised **in India**. The allegations are specific regarding entrustment of the dowry

articles to the petitioners and other in-laws of the complainant, which are allegedly still in their custody. Investigation qua petitioner No.2 is pending as he has not joined the same. This Court vide order dated 12.02.2018 directed the trial Court to continue with the proceedings but restrained it from passing the final order. Thereafter, vide order dated 14.03.2018, proceedings against the petitioners were directed to be stayed. Admittedly, the case is under investigation qua petitioner No.2 till date. Neither he has ever joined the investigation nor he has been enlarged on bail. After hearing the arguments raised by the parties and perusing the record, it is apparent that case is replete with the disputed questions of fact. Allegations and counter-allegations can be assessed only after a thorough investigation by the Investigating Agency. During pendency of the investigation, it would be against the mandate of the law settled by the Hon'ble Supreme Court of India to quash the FIR by invoking the inherent powers under Section 482 Cr.P.C. Hon'ble Supreme Court in the case of **State of Haryana and others vs Bhajan Lal and others** (1992 supp (1) SCC 335) has settled that in what type of circumstances the FIR can be quashed. The same reads as under:-

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused; (2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same

do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Thereafter, Hon'ble Supreme Court in Gian Singh vs State of Punjab and another (2012) 10 Supreme Court Cases 303 further dealt with the issue and the earlier law settled by the Supreme Court for quashing of the FIR in State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335. Para 61 of the judgment reads as under:-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice, or (ii) to prevent abuse of the

process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the

High Court shall be well within its jurisdiction to quash the criminal proceeding.”

Recently, Hon'ble the Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. vs State of Maharashtra and another**, 2021 SCC Online SC 315 has held that the High Court should exercise the power under Section 482 Cr.P.C. with great circumspection and sparingly.

The investigation is complete qua petitioner No.1 and challan has been filed qua him. Regarding petitioner No.2, the case is still under investigation. Though the parties are divorced but there is nothing on record to show any agreement arrived at between the parties regarding the inter se litigation pending between them in India.

With utmost humility, there is no dispute regarding the judicial precedent relied upon by counsel for the petitioners, however, in the facts and circumstances, where the case is still under investigation, the same are distinguishable and hence weighing the facts and circumstances on the anvil of the law settled by the Hon'ble Supreme Court, this Court is unable to agree with the arguments advanced by counsel for the petitioners and hence, rejects the same. Case needs to be thoroughly investigated. No case for quashing of the FIR is made out.

Resultantly, the petition being devoid of any merit is hereby dismissed.

Nothing said hereinabove shall have any bearing on the merits of the case.

August 25, 2022

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(RAJESH BHARDWAJ)

JUDGE

1. Whether speaking/reasoned ?

Yes/No

2. Whether reportable ?

Yes/No